

Sexually Dangerous Persons

Incompetent Respondent

Commonwealth v. Nieves

Supreme Judicial Court, April 26, 2006

An incompetent respondent may be subject to civil commitment as a sexually dangerous person.

The Commonwealth filed a petition to civilly commit the respondent as a sexually dangerous person (SDP). The respondent was mildly retarded and was found incompetent to stand trial. Due to the respondent's incompetency, the judge denied the Commonwealth's motion to proceed to trial and reported the following questions pertaining to the SDP statute:

- Q: Does the Supreme Judicial Court's holding in *Commonwealth v. Knowlton*, 378 Mass. 479 (1979) prescribing substantive procedures and protections for incompetent respondents in sexually dangerous persons (SDP) proceedings under the now repealed § 6 of c. 123A, apply to a proceeding under § 12 of c. 123A?
- A: *No. Interpretations of repealed sections of c. 123A do not apply to the materially different sections of the statute presently in effect.*
- Q: Can a petition for indeterminate commitment under §§ 12 through 14 of c. 123A proceed as against an incompetent respondent?
- A: *Yes. Due process is not offended by proceedings to commit an incompetent person, represented by an attorney. "We see no reason why the public interest in committing sexually dangerous persons to the care of the treatment center must be thwarted by the fact that one who is sexually dangerous also happens to be incompetent."*
- Q: Who exercises or waives the substantive rights granted respondents in petitions for their commitment for a day to life under §§ 12 through 14 of c. 123A?
- A: *The judge may permit an incompetent person's attorney to invoke or waive various statutory rights, including the right to a jury trial.*

Q: Can a respondent who is incompetent to participate in the therapy provided under c. 123A be civilly committed to the care of the Treatment Center?

A: *Yes. Commitment to protect the public is not improper, even where no effective treatment exists to remedy the defendant's infirmity.*

Q: Should the Trial Court appoint a guardian ad litem and utilize the "substituted judgment" standard to determine whether a respondent, who has been found incompetent for all purposes, should exercise or waive his substantive rights including whether he should testify on his own behalf at a trial on an SDP petition?

A: *No. A guardian ad litem need not be appointed. (Only in an extraordinary case should the judge exercise inherent or statutory authority to appoint a guardian ad litem.)*

Having issued the above rulings, the Court addressed the risk that an incompetent person committed to the treatment center might be unable to avail himself of the opportunity, provided by statute, for an annual review of his commitment pursuant to §9. In order to satisfy due process concerns and afford the respondent adequate constitutional adequate protection, the Court outlined the following procedure should the Commonwealth seek to continue the commitment:

If the Commonwealth believes that the respondent continues to be a sexually dangerous person, it must seek appointment of a court-appointed attorney for the incompetent person before the expiration of the initial term of one year. Such attorney may then exercise the rights of the incompetent person in regard to a proceeding. This procedure must at a minimum be followed at each successive occasion at which the petitioner has a right to apply for a hearing but remains incompetent.